IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

Crl.MC.No. 1067 of 2007()

MP.169/2007 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
CRIME NO.8/07 OF CENTRAL POLICE STATION

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PETITIONER: CLAIM PETITIONER

K.P.MURALEEDHARAN, S/O.LATE U.K.MENON,
AGED 49, MANAGER OPERATIONS MUSIC WORLD,
(SPENCER'S DIVISION), M.G.ROAD, ERNAKULAM.

BY ADV. SRI.K.R.SUNIL

RESPONDENTS:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1067 of 2007

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Dated this the 9th day of April, 2007

O R D E R

The petitioner is the third accused and the prosecution is under the provisions of the Copy right Act. Accused 1 and 2 are allegedly employees of the petitioner. 780 compact discs as well as digital video cassettes were seized in the course of investigation. Offences have allegedly been committed in respect of those articles. The seized articles have been produced before the Court. The petitioner filed Annex.A2 application for return of the said compact discs seized from his possession. The learned Magistrate, by Annex.A3 order, has rejected the said request.

2. The petitioner's request in this Crl.M.C. is two fold. He first of all submits that no offence whatsoever has been committed by the petitioner in keeping possession of the compact discs. No forgery has been committed. The petitioner therefore raises a contention that in as much as no offences have been shown to be committed in respect of these C.Ds., they are liable to be returned to the petitioner.

3. In the alternative, the petitioner submits that the investigation is now complete. Final report has already been filed. The C.Ds. are kept in the custody of the Court under conditions which would cause damage and destruction to the C.Ds. He therefore prays that appropriate direction may be issued for safe custody of the C.Ds. till final disposal of the case so that the petitioner will not be put to unnecessary sufferings, hardship and loss.

4. I have gone through the impugned order. It does not show that a contention was raised before the learned Magistrate that no offence has been committed in respect of the seized C.Ds. I am of the opinion that the learned Magistrate must advert to that aspect after giving the petitioner an opportunity to place all relevant materials in support of his contention that no offence has been committed in respect of the 780 compact discs seized from his possession. Even if the learned Magistrate were not pleased to return the C.Ds. to the petitioner on a fresh consideration of the question, the learned Magistrate must ensure that the articles are kept in custody without any threat to the safety and condition of those C.Ds. Appropriate orders must be passed by the learned Magistrate on that aspect also.

5. This Crl.M.C. is allowed in part. Annex.A3 order is set aside. The learned Magistrate is directed to dispose of the petition afresh in

accordance with law in the light of the observations made above. The petitioner shall be given an opportunity to substantiate his contention that no offence has been committed in respect of the C.Ds. seized by the police, before fresh orders are passed.

6. Hand over copy of the order to the learned counsel for the petitioner for production before the learned Magistrate. The learned Magistrate shall dispose of the petition afresh as expeditiously as possible, at any rate, within a period of 15 days from the date on which a copy of this order is produced before the learned Magistrate.

(R. BASANT)
Judge

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